

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

IN RE: Brian Darnell  
513 Misty Lane  
Friendswood, TX 77546

CHAPTER 13  
CASE NO. 11-33029-H1

DEBTOR

---

**MOTION TO DISMISS OR CONVERT**

---

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

David G. Peake, Chapter 13 Trustee moves the court to Dismiss or Convert the above-referenced case for the following reasons:

The Chapter 13 Plan must be amended to provide for the claims of the secured and priority Creditors in full within the terms of the Plan.

Payments due pursuant to U.S.C. § 1326(a)(1) have not been made.

Debtors failed to appear for the Meeting of Creditors and this constitutes a failure to appear in proper prosecution of the case for purposes of subsequent eligibility under 11 U.S.C. § 109.

The Debtors have not filed their Federal Income Tax return for the following years: . Therefore the Debtors are not able to meet the burden of proving that the Plan complies with 11 U.S.C. § 1322 (a) (2).

The Debtors have caused unreasonable delay that is prejudicial to the Creditors.

Other: Failed to provide copy of 2010 income tax return to the Trustee.

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON JUNE 28, 2011 AT 10:00 AM IN U.S. BANKRUPTCY COURT, 515 RUSK, ROOM 404, 4TH FLOOR, HOUSTON, TX 77002-0000. IF YOU WANT A HEARING, YOU MUST REQUEST ONE IN WRITING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT WITHIN TWENTY ONE DAYS AS FOLLOWS: 1. FILE A RESPONSE WITHIN TWENTY ONE DAYS THAT SHOWS THAT THE ABOVE-CITED DEFICIENCY HAS BEEN CURED, OR 2. FILE A RESPONSE WITHIN TWENTY ONE (21) DAYS THAT SHOWS THAT THE COURT SHOULD ALLOW YOU ADDITIONAL TIME TO CURE THE ABOVE-CITED DEFICIENCY. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND DISMISS OR CONVERT YOUR CASE. IF THE DEFICIENCY IS FOR FAILURE TO FILE TAX RETURNS AND THE CASE IS DISMISSED, YOU WILL NOT BE ALLOWED TO FILE ANOTHER BANKRUPTCY CASE UNTIL ALL OF YOUR RETURNS ARE FILED.**

Wherefore, the Trustee requests that the case be dismissed or converted to Chapter 7, whichever shall be determined in the best interest of creditors.

Dated: May 26, 2011

/s/ David G. Peake

David G. Peake  
Standing Chapter 13 Trustee

---

**CERTIFICATE OF SERVICE**

---

I certify that a true and correct copy of the foregoing document was sent to all parties listed on the matrix on file with the Bankruptcy Clerk's Office on or about the time this document was electronically filed with the Clerk on 05/26/2011. A copy of the Certificate of Mailing of the document is on file and may be viewed at the U.S. Bankruptcy Clerk's Office.

Electronically signed by  
David G. Peake, Chapter 13 Trustee

Debtor's Attorney of Record:  
MICHAEL G BUSBY  
BUSBY & ASSOCIATES  
2909 HILLCROFT SUITE 350  
HOUSTON, TX 77057

ATTORNEY GENERAL FOR U S  
10TH & CONSTITUTION AVE  
WASHINGTON D C  
, 20530

BARRETT DAFFIN FRAPPIER TURNER &  
ENGEL LLP  
610 WEST 5TH STREET SUITE 602  
AUSTIN, TX 78701

CHEX SYSTEMS  
ATTN: CONSUMER RELATIONS  
7805 HUDSON RD # 100  
SAINT PAUL, MN 55125

INTERNAL REVENUE SERVICE\*\*\*  
P O BOX 7317  
PHILADELPHIA, PA 19101-7317

RESURGENT CAPITAL SERVICE  
PO BOX 10587  
GREENVILLE, SC 29603-0587

TELECHECK  
5251 WESTHEIMER RD SUITE B100  
HOUSTON, TX 77056

Debtor:  
Brian Darnell  
513 Misty Lane  
Friendswood, TX 77546

BAC HOME LOANS SER  
450 AMERICAN ST  
SIMI VALLEY, CA 93065

CAPITAL ONE  
PO BOX 85520  
RICHMOND, VA 23285

INTERNAL REVENUE SERVICE  
PO BOX 7346  
PHILADELPHIA, PA 19101-7346

MICHAEL G BUSBY  
BUSBY & ASSOCIATES  
2909 HILLCROFT SUITE 350  
HOUSTON, TX 77057

SOUTHWEST AIRLINES FCU  
PO BOX 35708  
DALLAS, TX 75235

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:

CHAPTER 13

Brian Darnell  
513 Misty Lane  
Friendswood, TX 77546

CASE NO. 11-33029-H1

DEBTOR

---

**ORDER OF DISMISSAL**

---

The Court has considered the Trustee's Motion to Dismiss and any response or opposition thereto. The court is of the opinion that proper notice to all parties in interest has been given and that the Motion should be granted. It is therefore

ORDERED that this case is dismissed.

Dated: \_\_\_\_\_

---

United States Bankruptcy Judge